IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

Crl.MC.No. 3591 of 2007()

CMP 14867/03 OF JFCM - II, ERNAKULAM
CMP.3591/2007 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER: ACCUSED

V.N.SANTHOSH, S/O.NARAYANAN,
VELUTHEDATH HOUSE, ASOKA ROAD,
KALOOR, KOCHI.17.

BY ADV. SRI.C.S.SUNIL
SMT.SARITHA.C.BREEZEVILLA

RESPONDENTS:

THE STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. M.S. BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 18/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 3591 of 2007

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Dated this the 18th day of December, 2007

O R D E R

About an incident, which took place on 16.10.2003, two crimes were registered at the Ernakulam Town North police station. Crime No.482 of 2003 was registered on the basis of the complaint of the petitioner herein, whereas Crime No.483 of 2003 was registered on the basis of the complaint of the adversary of the petitioner. Both crimes were being investigated by the Ernakulam Town North police. The petitioner was aggrieved by the nature of investigation conducted by the Town North police. He therefore filed a private complaint making allegations against his adversaries about the very same incident which took place on 16.10.2003.

2. The learned counsel for the petitioner submits and I agree with the learned counsel that as Crime No.482 of 2003 about the same incident registered on the basis of the complaint of the petitioner was pending in investigation, the learned

Magistrate must have kept the private complaint on file and stayed the proceedings under Section 210 Cr.P.C. awaiting the final report in Crime No.482 of 2003. Instead, the learned Magistrate by order dt. 29.12.203 directed that the complaint be forwarded to the police afresh under Section 156(3) Cr.P.C. On receipt of the said reference under Section 156(3) Cr.P.C., the Town North Police registered another F.I.R. in Crime 602 of 2003 on the basis of such complaint. Investigation into Crimes 482 and 483 of 2003 continued. In both those crimes positive final reports have been filed. In Crime 482 of 2003 cognizance has been taken as C.C.227 of 2006, whereas in Crime 483 of 2003 cognizance has been taken as C.P. 12 of 2006. Those proceedings are pending now. The petitioner is dissatisfied with the investigation in Crime no.482 of 2003.

3. In Crime No. 602 of 2003, no further action was taken in view of the pendency of Crime 482 of 2003. After the final report was filed in Crime 482 of 2003, it was reported to the learned Magistrate that Crime No.602 of 2003 is also being closed.

4. The petitioner has come to this Court with a grievance that he has been denied opportunity to prosecute his private complaint. Annex.A1 complaint filed by him, i.e. Crl.M.P. 14867 of 2003, must have been kept in abeyance till the final report was received and the petitioner must have then been given opportunity to substantiate the allegations raised by him in the said complaint.

5. The learned counsel submits that the procedure adopted is totally incorrect. The petitioner has thereby been deprived of an opportunity to substantiate his allegations in his complaint, Crl.M.P. 14867 of 2003. He finally submits that the petitioner will be satisfied if the petitioner is given an opportunity to adduce evidence in support of the allegations raised by him in Crl.M.P. 14867 of 2003. The said request does appear to me to be justified.

6. Dissatisfied with the investigation in Crime No.482 of 2003, the petitioner had filed Crl.M.P. 14867 of 2003. Following the procedure prescribed in Section 210 Cr.P.C., the learned Magistrate must have stayed the proceedings in that complaint and kept the complaint on file. After receiving the final report in Crime 482 of

2003, the petitioner must have been given an opportunity to adduce materials and substantiate the allegations raised by him in Crl.M.P. 14867 of 2003. In not having done so and in having directed that the said complaint Crl.M.P. 14867 of 2003 be also forwarded to the police under Section 156(3) Cr.P.C., the Magistrate has clearly and evidently gone wrong.

6. This Crl.M.C. is accordingly allowed. The order dt.29.12.2003 in Crl.M.P. 14867 of 2003 is hereby set aside. The learned Magistrate is directed to dispose of the complaint, Crl.M.P. 14867 of 2003, in accordance with law. The petitioner/complainant shall appear before the learned Magistrate on 14.1.2008 to continue the proceedings.

7. Hand over copy of the order to the learned counsel for the petitioner for production before the learned Magistrate.

(R. BASANT)
Judge

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